**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

**THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928**

**WP(C).No. 18791 of 2006(K)**
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**PETITIONER:**
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**P.P. MADHAVI, RETIRED LIBRARY ASSISTANT**
**PAYYANNUR COLLEGE.**
**D/O. T. KUNHIRAMAN (LATE) PUTHIYAPURIYIL**
**VENNACHAL, P.O. KUNHIMANGALAM,**
**KANNUR DISTRICT.**

**BY ADV. SRI.M.V.AMARESAN**

**RESPONDENTS:**
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1. **THE SECRETARY TO GOVERNMENT**
   **DEPARTMENT OF HIGHER EDUCATION,**
   **THIRUVANANTHAPURAM.**

2. **THE DIRECTOR OF COLLEGIATE EDUCATION**
   **THIRUVANANTHAPURAM.**

3. **THE DEPUTY DIRECTOR OF COLLEGIATE**
   **EDUCATION, KOZHIKODE.**

4. **THE PRINCIPAL, PAYYANNUR COLLEGE,**
   **EDAT, PAYYANNUR, KANNUR.**

**BY G.P.SRI.T.T.MUHAMMAD.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**APPENDIX**

**PETITIONER'S EXHIBITS**

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| **EXT.P1** | **TRUE COPY OF THE EARNED LEAVE BILL OF THE PETITIONER SUBMITTED BY THE FOURTH RESPONDENT BEFORE R3.** |
| **EXT.P2** | **TRUE COPY OF SURRENDER AND RETURNED BILL ALONG WITH A LETTER.** |
| **EXT.P3** | **TRUE COPY OF PAGE 15 OF THE SERVICE BOOK OF THE PETITIONER WHICH CONTAINS DETAILS OF LEAVE SURRENDER ALREADY GRANTED BY THE THIRD RESPONDENT.** |
| **EXT.P4** | **TRUE COPY OF PAGE 37 OF THE SERVICE BOOK OF THE PETITIONER WHICH CONTAINS DETAILS OF LEAVE SURRENDER ALREADY GRANTED BY THE THIRD RESPONDENT.** |
| **EXT.P5** | **TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.** |
| **EXT.P6** | **TRUE COPY OF THE JUDGMENT IN W.P.C.NO.33340/05 OF THIS COURT.** |
| **EXT.P7** | **TRUE COPY OF THE ORDER DATED 23-6-06** |

**/True Copy/**

**PA to Judge.**

**K.M.JOSEPH, J.**

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**W.P.(C).No.18791 OF 2006**

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Dated this the 11th day of January, 2007

**JUDGMENT**

Case of the petitioner in brief is as follows.

Petitioner is a retired Library Assistant in the fourth respondent college. She retired on 31-10-2004. According to the petitioner, under note 5 under Rule 81 of Part I KSR, Library Assistants are non-vacation staff. Petitioner had been granted leave surrender as disclosed in Ext.P3 and P4. On retirement, Ext.P1 bill was submitted before the third respondent for terminal surrender of 284 days of earned leave. By Ext.P2, it came be declined by the third respondent saying that Library Assistants are not non-vacation staff. Petitioner challenges Ext.P2. Case of the petitioner is that Ext.P2 was passed without hearing her. Petitioner filed Ext.P5 representation before the second respondent. This court directed the same to be considered vide Ext.P6 judgment. Ext.P7

is the consequential order . Case of the petitioner is that in Ext.P7 reasons stated is that a clarification was sought from the Government whether departmental library staff shifted to central library can be considered as non-vacation staff and be provided the benefit of earned leave surrender. Petitioner was working in the departmental library.

2. Though time was given to file the counter affidavit, no counter is filed. I heard learned counsel for the petitioner and the respondents and also the learned Government Pleader.

3. I have already taken a view in the judgment in W.P.(C)No.10363/06 pronounced by me today, that in view of the Government order dated 07-11-1974 and note 5 under Rule 81 of part I K.S.R., Library staff are to be treated as non-vacation staff. I have considered the question raised on the basis of Ext.P4 order dated 22-11-1994 also. Even though it is a case where petitioner was working in the departmental library, I feel that, petitioner is entitled to be succeed in the light of the statutory provision

contained in note 5 under Rule 81 of Part I K.S.R. besides order dated 07-11-1974. Learned Government Pleader is unable to resist the contention of the petitioner that though she was working in the departmental library, she is entitled to the benefit of surrender of earned leave under the Note.

4. In such circumstances, Ext.P7 is quashed and the second respondent will pass appropriate orders in accordance with law and in the light of the observation made in the judgment within a period of six weeks from the date of production of a copy of this judgment.

Writ petition is allowed.

**K.M.JOSEPH**
**JUDGE**

sv.